

REMARKS/ARGUMENTS

Claims 1-22 are pending in the application. No claims are modified in this amendment. Claims 8-22 are withdrawn from consideration, and claim 1 is the lone remaining independent claim. Claims 1-7 have been examined and stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,631,849 (“Blossom”) in view of U.S. Patent No. 5,839,117 (“Cameron”) and U.S. Patent No. 5,930,764 (“Melchione”).

35 U.S.C. § 103(a) Rejection

Claims 1-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Blossom in view of Cameron and Melchione. Applicant asserts that numerous limitations from the claims are neither taught or suggested in the cited references. The following limitations found in independent claim 1 are missing from the cited portions of the references.

1. 3rd Receiving Step

The 3rd receiving step of claim 1 contains a limitation not found in the cited references. This step of claim 1 calls for “receiving, at a point of sale device, a response . . . identifying . . . nonzero (distributions) . . . of the cost for the transaction” to the different accounts associated with a single instrument.

Although unclear, the Office Action apparently relies on Cameron to recite this limitation (Office Action dated June 14, 2005, page 3, 2nd paragraph). Cameron describes a “computerized . . . order entry system” with an “order payment window” displaying “payment options” which include “the ability to allocate an order across . . . payment methods” (Cameron, Abstract, lines 1-3; column 10, lines 58-59; column 11, lines 55-57). Cameron does not teach or suggest 1) receiving identification of the allocation at a point of sale device, or 2) that the allocation be to different accounts associated with the same instrument.

2. Generating Step

The generating step of claim 1 contains a limitation not found in the cited references. This step of claim 1 calls for “generating a request to select a *distribution of the cost for the transaction* among . . . [accounts] at the point-of-sale device” (emphasis added).

The Office Action explicitly relies on Blossom to recite this limitation (Office Action dated June 14, 2005, page 3, 1st paragraph). Blossom describes a “card reader (which) may also include means for allowing a user to select *a* card feature and a display for displaying *the* selected card feature and/or other information relating to *the* selected card feature” (emphasis added, Blossom, column 7, lines 53-56). As clearly illustrated by the emphasized portions, Blossom teaches a reader which selects a *single* feature at a time, not the *two* accounts explicitly taught by the claim. Moreover, claim 1 calls for selecting a *distribution of the cost for the transaction* among the accounts. Blossom merely discusses selecting a single feature for a particular transaction, and no *cost distribution* is discussed or suggested.

3. Transmitting Step

The transmitting step of claim 1 also contains a limitation not found in the cited references. This step of claim 1 calls for “transmitting, from the point-of-sale device, instructions to apply the cost for the transaction . . . in accordance with the received response” identifying nonzero distributions.

Although unclear, the Office Action apparently relies on Official Notice for this limitation, stating that “the step of transmitting the cost payment to the financial institution is deemed obvious . . . and is accomplished in Cameron” (Office Action dated June 14, 2005, page 3, 1st paragraph). First, Applicant disagrees with the characterization by the Office that the claim recites “transmitting the cost payment to the financial institution.” The *point-of-sale device* transmits *instructions* in accordance with *nonzero distributions*, which is clearly different than the meaning ascribed by the Office. If the statement is intended to rely on Official Notice, such taking of Official Notice is respectfully traversed and documentary evidence is requested.

MPEP 2144.03. The Office also states that this step is accomplished in Cameron; however, Cameron does not teach transmission from a point of sale device.

4. 2nd Receiving Step

The 2nd receiving step of claim 1 also contains a limitation not found in the cited references. This step of claim 1 indicates that the accounts “were linked substantially contemporaneously with issuance of the instrument to the customer.”

The Office Action relies on Melchione to recite this limitation (Office Action dated June 14, 2005, page 4, 1st paragraph). The Office cites the Abstract of Melchione, although this portion of Melchione notably lacks any discussion of issuing an instrument to a customer. Melchione has no disclosure of a stored-value account and credit account being linked substantially contemporaneously with issuance of an instrument associated with both accounts. The Office also generally references Fig. 16, and there is no Fig. 16 in Melchione, only Figs. 16A-F.

5. Motivation To Combine

Applicant believes motivation for the specific combination of elements in the cited references is lacking. As best understood by the Applicant, the motivation to combine arguments in the Office Action follow a reasoning that if someone made the combination, the advantages would be self-evident. To first make the combination can only be done relying upon impermissible hindsight reconstruction guided by the claims. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” MPEP 2143.01.

(1) In the Office Action, no cite is made to a reference in the art *itself* for a suggestion or motivation to combine. Applicant, thus, assumes that no such cite exists.

(2) Thus, the Applicant assumes Official Notice is being relied upon to assert that knowledge generally available in the art suggests the combination.

If this rationale is maintained, an express showing of documentary proof is hereby requested to support this stated motivation, as the documentary proof procedure is set forth in MPEP § 2144.03. The MPEP provides that Official Notice without documentary evidence is only appropriate in “rare” cases. *Id.* Failure of the Office to provide the necessary suggestion or motivation creates the presumption that the combination of references selected were based on impermissible hindsight reconstruction. *In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998).

For at least the reasons given above, independent claim 1 is allowable. Claims 2-7 depend from claim 1 and are, thus, allowable for at least the same reasons.

Restriction Requirement

Applicant notes the Examiner’s Final Restriction Requirement for claims 8-22, and again asserts the impropriety of the restriction requirement. Although this issue has been addressed thoroughly in previous responses, the Applicant again respectfully requests reconsideration of the restriction requirement.

Conclusion

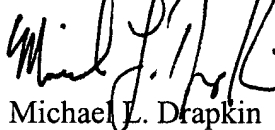
In view of the foregoing, Applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Application No. 10/694,925
Amendment dated September 12, 2005
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PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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